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No. 93-1153

In The

Supreme Court of the United States

October Term, 1993

JERRY N. MIXON, M.D.,

Petitioner,

v.

FRANKLIN COUNTY, STATE OF IDAHO, et al,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS TWI, INC. AND ROBERT G. MANGINI'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit Court of Appeals correctly applied Rule 77(d) of the Federal Rules of Civil Procedure and Rule 4(a) of the Federal Rules of Appellate Procedure in originally dismissing Petitioner's Appeal. (See Appendix E).

2. Whether, in light of Petitioner's arguments and affidavits filed in the First Appeal to the Ninth Circuit Court of Appeals, that court properly ruled on the availability of relief under Fed. R. Civ. P. 60(b).

3. Whether the Ninth Circuit Court of Appeals properly applied the doctrine of the law of the case.

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

TWI, Inc. and Robert G. Mangini concur with the Petitioner's description of the parties as set forth in the Petition and subsequently clarified by Respondents Gunnell and Schvaneveldt and the State of Idaho respondents.

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OPINIONS BELOW

TWI, INC., and Robert G. Mangini Respondents concur with the description of the opinions below set forth in the Brief in Opposition to Petition for Writ of Certiorari filed by Respondents Gunnell and Schvaneveldt and the State of Idaho.

JURISDICTION

TWI, INC., and Robert G. Mangini Respondents concur with Petitioners Statement of Jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TWI, INC., and Robert G. Mangini Respondents concur with the Respondents Gunnell's and Schvaneveldt's and the State of Idaho's Statement of "Constitutional and Statutory Provisions."

STATEMENT OF THE CASE

TWI, INC., and Robert G. Mangini Respondents concur with the Statement of the Case set forth in Respondents Gunnell's and Schvaneveldt's and the State of Idaho's Briefs in Opposition to Petition for A Writ of Certiorari.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

I.

THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR WARRANTING A WRIT OF CERTIORARI

TWI, INC., and Robert Mangini Respondents respectfully submit that there are no compelling reasons on

which to base the issuance of Writ of Certiorari. As demonstrated below, due to the factual and procedural history of this case, along with changes to the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure, any ruling by this Court other than denial of Petitioner's Writ, would be of no precedential value.

II.

THE NINTH CIRCUIT CORRECTLY APPLIED THE FEDERAL RULES OF CIVIL PROCEDURE AND FEDERAL RULES OF APPELLATE PROCEDURE AS WELL AS APPLICABLE NINTH CIRCUIT PRECEDENT.

TWI, INC., and Robert Mangini, Respondents, concur in the briefs submitted by Respondents Gunnell's and Schvaneveldt's and the State of Idaho's in that the rules clearly put the burden on a party's counsel to check a status of a case after argument to the court.

III.

THE NINTH CIRCUIT CORRECTLY DENIED MIXON'S RELIEF UNDER RULE 60(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

TWI, INC., and Robert Mangini, Respondents, concur and adopt the arguments of Respondents Gunnell's and Schvaneveldt's and the State of Idaho in that the Ninth Circuit Court correctly applied the Federal Rules of Civil Procedure under Rule 60(B).

IV.

THE COURT OF APPEALS PROPERLY APPLIED THE LAW OF THE CASE.

TWI, INC., and Robert Mangini, Respondents, concur and adopt the arguments of Respondents Gunnell's and Schvaneveldt's and submit that the Court of Appeals properly applied the law of the case in that the motion panel had already ruled on the motion.

V.

CONCLUSION

TWI, INC., and Robert Mangini, Respondents, concur with Respondents Gunnell and Schvaneveldt and the State of Idaho that the Petition should not even reach the Court's "discussion list," as the issues presented clearly are not of public concern. The amendments to the Federal Rules of Civil Procedure and Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure have settled the issues raised by the Petition. TWI, INC., and Robert Mangini, Respondents, respectfully submit that a grant of Petitioner's Writ would be improvident.

Respectfully submitted this 17th day of March, 1994.

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